

Chapter 357 of the Acts of 2002

AN ACT RELATIVE TO APPRENTICESHIP TRAINING PROGRAMS.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Chapter 23 of the General Laws is hereby amended by striking out sections 11E to 11L, inclusive, and inserting in place thereof the following 8 sections:-

Section 11E. There shall be in the department an apprenticeship council, to consist of 8 members, 6 of whom shall be appointed by the director with the approval of the governor, 1 of whom shall be the deputy director of employment and training or his successor, in the department of labor and workforce development, ex officio, and 1 of whom shall be the associate commissioner of career and technical education or his successor, in the department of education, ex officio. Of the appointive members, 3 of whom shall be persons who, on account of previous vocation, employment, occupation or affiliation, may be classified as representatives of labor and 3 of whom shall be persons who, on account of previous vocation, employment, occupation or affiliation, may be classified as representatives of management. The terms of office of the representatives of labor and management initially appointed shall expire as designated by the director at the time of making the appointments, 1 representative each of labor and management shall be appointed for a term of 1 year, 1 representative each of labor and management shall be appointed for a term of 2 years, and 1 representative each of labor and management shall be appointed for a term of 3 years. Thereafter, each member representing labor and management shall be appointed for a term of 3 years. Any member appointed to fill a vacancy occurring prior to the expiration of the term of his predecessor shall be appointed for the remainder of the term. Each member of the council not otherwise compensated by the commonwealth may be reimbursed for transportation and other necessary expenses. The council shall not meet more than 15 days in a year.

The council shall meet at the call of the director and shall aid the director in formulating policies for the effective administration of this chapter. The council shall suggest standards for apprentice programs and apprentice agreements, which shall in no case be lower than those prescribed by this chapter. The council shall suggest such rules and regulations as it deems necessary to carry out the intent and purposes of this chapter, and shall perform such other functions as the director may direct.

Section 11F. The director, subject to approval by the governor, shall appoint a deputy director of apprentice training. The deputy director may appoint and employ such clerical, technical and professional assistance as shall be necessary to effectuate the purposes of this chapter, and may utilize any federal funds available to aid in the administration of this chapter.

Section 11G. The director and deputy director, with the advice and guidance of the apprenticeship council, shall administer sections 11E to 11W, inclusive, shall keep a record of apprentice programs and apprentice agreements and their disposition, shall cooperate with the state department of education and the local school authorities in regard to the education of apprentices in accordance with the standards established by the director and deputy director for the same trade or group of trades, and shall perform such other duties as are necessary to carry out the intent of said sections 11E to 11W, inclusive.

The director and deputy director may set up and establish conditions and training standards for apprentice programs and apprentice agreements, which conditions or standards shall in no case be lower than those prescribed by said sections 11E to 11W, inclusive, may create and implement a schedule of progressive sanctions regarding registration of apprentice programs, may act as secretary of the apprenticeship council, may approve an apprentice program or apprentice agreement which meets the standards established under said sections 11E to 11W, inclusive, may terminate or cancel an apprentice program or apprentice agreement in accordance with said sections 11E to 11W, inclusive, and may issue certificates of completion of apprenticeship.

Section 11H. As used in this chapter the following words shall, unless the context clearly requires otherwise, have the following meaning:-

"Apprentice", a person at least 16 years of age who has entered an apprentice agreement with an employer, or an association of employers, or an organization of employees, or other apprentice program sponsor.

"Apprentice agreement", a written agreement between an apprentice and an apprentice program sponsor which is registered with the division and which provides for not less than 2,000 hours of reasonably continuous employment, consistent with training requirements as established by industry practice, in the occupation to which he is apprenticed. The written agreement shall also provide for not less than 150 hours per year of related instruction for a person in the occupation to which he is apprenticed, as well as participation in an approved schedule of work experience throughout a reasonably continuous period of employment.

"Apprenticeable occupation", a skilled trade which: (1) is customarily learned in a practical way through a structured, systemic program of on-the-job supervised training; (2) is clearly identified and commonly recognized through an industry; (3) involves manual, mechanical or technical skills and knowledge which require a minimum of 2,000 hours of on-the-job work experience; and (4) requires related training to supplement the on-the-job training.

"Apprentice program", a program which is registered with the division for the recruitment, selection, employment, training and qualification of apprentices.

"Apprentice program sponsor", a person, association, committee, organization, corporation, partnership, trust or other entity operating an apprentice program and in whose name the program is registered with the division.

"Deputy director", the deputy director of apprentice training.

"Director", the director of labor and workforce development.

"Division", the division of apprentice training in the department of labor and workforce development.

Section 11I. Every apprentice agreement entered shall include at least the following basic provisions:

(a) a requirement that the apprentice receive a minimum of 2,000 hours of employment as an apprentice, consistent with training requirements as established by industry practice, in the occupation to which he is apprenticed;

(b) a requirement that the apprentice receive a minimum of 150 hours per year of related classroom instruction during the period of apprenticeship in the occupation to which he is apprenticed;

- (c) a schedule of the work processes to be learned in the occupation;
- (d) a progressively increasing scale of wages for the apprentice, during the period of apprenticeship, averaging at least $\frac{1}{2}$ of the rate of pay of a journey person over a similar period;
- (e) a concise and accurate statement of the terms and conditions of the employment and training of the apprentice and a statement that the apprenticeship agreement shall be registered with the division within 30 days of its execution;
- (f) a statement that such agreement may be terminated, within 6 months of its execution, by either the employer or the apprentice, for any reason;
- (g) a statement that the agreement may be terminated by the deputy director any time during the duration of the agreement if the deputy director deems it proper; and
- (h) a statement that the division is available to receive, investigate and resolve any complaints the apprentice has about the apprentice training program in which the apprentice is registered.

Section 11J. No apprentice agreement shall be effective until approved by and registered with the division. An apprentice agreement shall be signed by the apprentice program sponsor and by the apprentice and, if the apprentice is a minor, by a legal guardian of the minor and by the deputy director. When a minor enters into an apprentice agreement for a period of training extending beyond the date upon which the apprentice shall attain his majority, the apprentice agreement, if approved and registered, shall be binding for the entire period referred to in the agreement, including so much thereof as may extend beyond the date upon which the apprentice attained majority.

Section 11K. To be approved by and registered with the division, an apprentice program shall substantially conform with the following basic standards:-

- (a) The ratio of apprentices to journeypersons shall not conflict with the ratio established in apprenticeable occupations operated by the joint labor management apprentice training programs approved under this chapter. Notwithstanding section 11G, neither the deputy director, the director, nor the apprenticeship council shall set up and establish conditions and training standards for apprentice programs which are in conflict with this ratio.
- (b) The apprentice program shall be open to all persons at least 16 years old and shall not discriminate on the basis of age, race, color, creed, national origin, gender, sexual orientation or disability.
- (c) The apprentice program shall ensure that each apprentice works a minimum of 2,000 hours of employment, consistent with training requirements as established by industry practice, at the occupation to which he is apprenticed. The apprentice program shall ensure that each apprentice receives a minimum of 150 hours annually of related classroom instruction in the occupation to be learned.
- (d) The apprentice program must ensure that each apprentice is paid in accordance with a predetermined schedule of wage rates based on the journeyperson rate, said schedule to progressively increase with the apprentice's skill level and average at least 50 per cent of the journeyperson's rate for the apprenticeship term.

(e) The apprentice program shall allow credit or advanced standing to be granted to an apprentice for hands-on training or related instruction which the apprentice may have previously obtained, but all such credit or advanced standing shall comply with this chapter.

(f) The apprentice program shall establish a procedure to receive, investigate and resolve apprentices' complaints about the program. The procedure shall provide that any such complaint shall be filed within 6 months after the apprentice knew, or reasonably should have known of the act giving rise to the complaint. Notice of the complaint procedure shall be provided to all apprentices. Such notice shall advise an apprentice that the division is available to receive, investigate and resolve any complaints about the program that have not been resolved to the satisfaction of the apprentice after all internal procedures have been fully exhausted.

Section 11L. A person, association, committee, organization, corporation, partnership, trust or other entity seeking to sponsor an apprentice program may apply for a registration in accord with procedures established by the division. The application shall describe the proposed program, giving the terms and conditions of the apprentices' employment, supervision of apprentices and provision of related instruction. The application shall also describe whether credit or advanced standing will be given for relevant hands-on training or related instruction and, if so, the terms and conditions by which such credit or advanced standing will be granted.

If the applicant is a party to a collective bargaining agreement, a statement to that effect shall be included with the application and a copy of the application shall be provided to the agent for the collective bargaining unit at least 2 weeks prior to filing the application with the division. If the applicant is involved in any abnormal labor condition, such as a strike, lockout or other similar condition, the application shall be withheld until such condition is resolved. Once a program is registered, the sponsor shall notify the division in writing within 30 days of any significant modifications to the program or of any material changes in information submitted with the application.

SECTION 2. Said chapter 23 is hereby further amended by inserting after section 11S the following 4 sections:-

Section 11T. (a) An apprentice program sponsor may voluntarily deregister its program by providing written notice to the division and its apprentices and otherwise complying with provisions established by the division.

(b) The deputy director, on his own initiative, or upon the complaint of an interested person, may investigate and determine whether there has been a violation of the terms of an apprentice agreement or apprentice program and may hold hearings, inquiries and other proceedings necessary to such investigations and determination. All hearings, investigations and determinations shall be made under authority of reasonable rules and procedure approved by the director.

The deputy director may deregister an apprentice program upon finding sufficient cause. Any of the following shall constitute sufficient cause for deregistration: (1) false statements or material omissions in the application for registration or documentation submitted; (2) violation of any of the requirements of this chapter; or (3) violation of a state or federal law which the deputy director determines to be of such serious and compelling nature to warrant suspension or deregistration of the apprentice program. The apprentice program sponsor shall be given a fair and impartial hearing, after reasonable notice of the hearing has been provided. If the proposed deregistration is for

a specific period of time, the duration of the deregistration and any conditions that shall be met in order to be re-registered shall be provided with the notice.

An apprentice program sponsor of a deregistered program shall comply with provisions established by the division. Such provisions shall include, but not be limited to, the requirement that within 10 business days of the effective date of any deregistration, the apprentice program sponsor shall provide written notice to all apprentices in its program that, for the period of such deregistration, all apprentice agreements shall be automatically terminated.

The determination of the deputy director shall be filed with the director and notice of the determination shall, at the same time, be mailed, postage prepaid, to each person known by the division to be an interested person, at his last address as shown by the division's records. A person aggrieved by a determination or action of the deputy director may, within the 10 day period, appeal to the director, who shall hold a hearing after due notice to all interested parties. If no appeal is filed with the deputy director within 10 days after the date of such filing and notice, the determination shall become the decision of the director.

A party to an apprentice program aggrieved by an order or decision of the director may appeal to the superior court; provided, however, that such order or decision shall be conclusive if the appeal shall not be filed within 30 days after the date of the order or decision. The order or decision shall be reviewed in accordance with the standards for review provided in section 14 of chapter 30A.

No person shall institute an action for the deregistration of an apprentice program unless he shall first have exhausted all administrative remedies provided by this section.

(c) Within 30 days of the date of the deregistration, whether voluntary or involuntary, of an apprentice program, the apprentice program sponsor shall send to the division a copy of all documents demonstrating the number of hours of hands-on training and related instruction obtained by all apprentices in the program.

(d) The division may reinstate the registration of an apprentice program in its discretion upon presentation of adequate evidence that the condition that gave rise to the deregistration has been remedied.

Section 11U. (a) The division, upon the complaint of an interested person or upon its own initiative, may investigate and determine whether there has been a violation of the terms of an apprentice agreement, and may hold hearings, inquiries and other proceedings necessary to the investigations and determination, provided that the apprentice filing a complaint has exhausted the procedures established pursuant to section 11K. All hearings, investigations and determinations of apprentice agreements shall be made under authority of reasonable rules and procedure prescribed by the director.

(b) The division shall not be required to hold hearings in matters confined solely to identifiable apprentice agreements, which the division may deregister at any time during the period of apprenticeship if it determines appropriate.

(c) The determination of the deputy director shall be filed with the director and notice of the determination shall, at the same time, be mailed, postage prepaid, to each person known by the division to be an interested person, at the last address as shown by the records of the division. If no appeal is filed

with the deputy director within 10 days after the date of the filing and notice, the determination shall become the decision of the director.

A person aggrieved by a determination or action of the deputy director may, within the time allowed, appeal to the director, who shall hold a hearing after due notice to all interested parties. A party to an apprentice program aggrieved by an order or decision of the director may appeal to the superior court; provided, however, that the order or decision shall be conclusive if the appeal is not filed within 30 days after the date of the order or decision. The order or decision shall be reviewed in accordance with the standards for review provided in section 14 of chapter 30A.

No person shall institute an action for the enforcement or deregistration of any apprentice agreement until after the person has exhausted all administrative remedies provided by this section.

(d) The deputy director may reinstate the registration of an apprentice agreement in its discretion upon presentation of adequate evidence that the condition that gave rise to the deregistration has been remedied.

Section 11V. Nothing in this chapter or in an apprentice program or apprentice agreement entered into and approved under this chapter shall operate to invalidate any apprenticeship provision in a collective bargaining agreement between employers and employees setting up higher apprenticeship standards.

Section 11W. The deputy director shall require each apprentice entering into a written agreement pursuant to this chapter to submit an application to the division for an apprentice identification card. Said application shall be accompanied by a fee paid by the apprentice or the program sponsor, together with photographic prints as required by the deputy director. The deputy director shall charge the fees necessary for the establishment and maintenance of the identification card system. The funds shall be received by the state treasurer on behalf of the commonwealth and deposited in a special trust account for the division and may be expended, without further appropriation, under the direction of the deputy director. An apprentice identification card shall contain the photograph of the apprentice; the apprentice registration number or such other number as the deputy director requires; the name and business address of the appropriate apprenticeship committee or single employer sponsor; the steps of progression and related dates applicable to the apprentice; and the projected date on which the apprentice is projected to complete the apprenticeship. As a condition of apprenticeship, the apprentice shall keep the apprentice identification card on his person during all hours of employment during the apprenticeship.

SECTION 3. The first paragraph of section 27 of chapter 149 of the General Laws, as appearing in the 2000 Official Edition, is hereby amended by inserting after the eighth sentence the following 2 sentences:- An apprentice performing work on a project subject to this section shall maintain in his possession an apprentice identification card issued pursuant to section 11W of chapter 23.

SECTION 4. The first paragraph of section 27B of said chapter 149, as so appearing, is hereby amended by inserting after the first sentence the following sentence:- For every week in which an apprentice is employed by a contractor, subcontractor or public body subject to this section, a photocopy of the apprentice's apprentice identification card, issued pursuant to section 11W of chapter 23, shall be attached to the records submitted under this section.

Approved October 25, 2002.